

*Sala Naambwe and Yvette Nimenya v.
Smithfield Foods, Inc.*

Thomas Anderson

June 1, 2018



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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

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SALA NAAMBWE and YVETTE NIMENYA,
Plaintiffs,
vs. 4:17-cv-04123-LLP
SMITHFIELD FOODS, INC.,
Defendant.

=====

Deposition of: TOM ANDERSON
Date: June 1, 2018
Time: 2:47 p.m.

=====

APPEARANCES

Ms. Stephanie Pochop
Johnson Pochop & Bartling
Gregory, South Dakota
Attorney for the Plaintiffs

Ms. Andrea R. Calem
Hunton Andrews Kurth, LLP
Washington, DC
Attorney for the Defendant

ALSO PRESENT: Sala Naambwe
Yvette Nimenya
Scott Reed, Smithfield Foods, Inc.

REPORTED BY: Audrey M. Barbush, RPR

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STIPULATION

1 It is hereby stipulated and agreed by and between the
2 above-named parties through their attorneys of record, whose
3 appearances have been hereinabove noted, that the videotaped
4 deposition of TOM ANDERSON may be taken at this time and
5 place, that is, at the offices of Boyce Law Firm, LLP,
6 300 South Main Avenue, Sioux Falls, South Dakota, on the
7 1st day of June, 2018, commencing at the hour of 2:47 p.m.;
8 said deposition taken before Audrey M. Barbush, a Registered
9 Professional Reporter and Notary Public within and for the
10 State of South Dakota. Objections, except as to the form of
11 the question, are reserved until the time of trial. Insofar
12 as counsel are concerned, the reading and signing of the
13 transcript by the witness is not waived.

-oOo-

TOM ANDERSON,
called as a witness, having been first duly sworn,
testified as follows:

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I N D E X

1	Examination:	Page
2	By Ms. Pochop	4/21
3	By Ms. Calem	15
4	-oOo-	
5	(There were no exhibits marked for identification.)	
6	-oOo-	
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EXAMINATION

1 BY MS. POCHOP:

2 Q Tom, you and I just introduced each other right before
3 your deposition, and I am the lawyer for Sala and
4 Yvette, and I'm going to be asking you questions today.
5 I'd like to know first how long you have been
6 employed at Smithfield Foods or John Morrell.
7 A 24 years.
8 Q Can you tell me what your job description is in
9 Smithfield Foods right now?
10 A I'm a pickle maker.
11 Q What --
12 A Pickle. Pickle maker. I make pickle for the bacon.
13 And I'm a steward, a union steward.
14 Q And have you been a member of department 19?
15 A (No response.)
16 Q What department are you in right now?
17 A Department 11.
18 Q How long have you been in department 11?
19 A 24 years.
20 Q Regarding your role as a union steward, can you
21 describe for me, is that a job within the company, or
22 is that a job within the union?
23 A In the union.
24 Q Do the union and the company -- other than their

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<p style="text-align: right;">Page 5</p> <p>1 contract -- like, for example, is the union -- as a 2 union steward, are you able to say what policies and 3 procedures Smithfield Foods managers should follow? 4 A Yeah. Yeah, I'm supposed to tell them, no, that it's 5 in the policy, they can't -- yes, that's what I'm 6 supposed to do. 7 Q And are you supposed to advise them about the -- when 8 you see managers or employees who aren't following the 9 union contract, is it your job as a union steward to -- 10 A No, my job is I go tell the union member that they 11 can't do it or whatever, and if the supervisor doesn't 12 agree with that, then I have to call somebody else 13 bigger. That's the business agent. 14 Q One of the things I want -- how long have you been a 15 union steward? 16 A I'm going to say about nine years. 17 Q Have you been involved in any race discrimination 18 complaints against the company in your role as a union 19 steward? 20 A Yes. 21 Q How many? 22 A One now. One. 23 Q Is that -- 24 A Sala. 25 Q -- Sala's? Do you think -- have you ever experienced</p>	<p style="text-align: right;">Page 7</p> <p>1 And then when Monday came along, they said -- they came 2 back to me and said, hey, we got wrote up, Tom, for 3 going over to report something. And I said, nah, you 4 shouldn't -- no, you shouldn't get wrote up for that, 5 you know, and then -- 6 Q Did you actually see the write-ups that they got? 7 A No. No, I didn't see it. Then I asked Rusty -- or he 8 said, Scott got wrote up too, but I didn't see it. 9 And, again, these girls got wrote up. I said, no, man, 10 it ain't supposed to go down like that. 11 And then I went to Scott Reed and told him. For 12 discrimination, a piece of paper, he gave me a blank 13 sheet of paper. Scott did. Yeah, he gave me a blank 14 sheet of paper. Yeah. And I was like, what's this? 15 So then I went to the union office, and I talked 16 to BJ, and he said, no, let he get a form. Then he 17 gave me a form, but it wasn't the same form for 18 discrimination or whatever, because they send me 19 something else saying that was a different form, told 20 me I had to go to a different building. Then we said 21 okay -- I said okay. 22 Then I gave it to -- told Sala that, you know, 23 they discriminated against y'all, they can't do that, 24 and then that was it. 25 Q So why did you go to talk to Scott Reed?</p>
<p style="text-align: right;">Page 6</p> <p>1 race discrimination in the workplace? 2 A No. 3 Q Have you ever witnessed other employees besides Sala 4 and Yvette be subject to discriminatory treatment in 5 the workplace? 6 A No. 7 Q Tell me about your involvement, what your role is in 8 Sala and Yvette's race discrimination complaint. 9 A Okay. Well, my role in it is because, okay, Saturday 10 they came in work and said, hey, Scott called them, 11 like, a name -- called them out their name, cussed at 12 them, and all that. So I went to the supervisor, 13 Rusty, and we went into the smoked meats wash office, 14 and it was, like, Sala, Yvette, Scott, Eudoxio, and 15 Lisa. And then he said he said it, and -- he said he 16 said it. He told me he said it, and I said -- he's 17 like, Tom, I don't want to get fired. And I said, hey, 18 you know, you're union steward just like -- you're a 19 union person just like the rest of them, okay, so if 20 anything, we'll see, they might give you three days or 21 something. Right? 22 And he came over and worked with me that day, and 23 then I went -- then I went home. And then they said 24 they was going to send these girls over to human 25 resources to fill the complaint out that Monday. Okay?</p>	<p style="text-align: right;">Page 8</p> <p>1 A Because I don't think that they should be wrote up and 2 everything, somebody call somebody out their name and 3 all -- and do all that, and though it in your -- in our 4 handbook it says zero tolerance, and I'm like -- I'm 5 stuck on that zero tolerance, like, what does that 6 mean? You know, you call somebody out their name and 7 it's okay. So... 8 Okay. So I went back over to the honey line the 9 next day and told the steward to do your damn job, and 10 then I went to human resources. Scott gave me three 11 days for saying "damn," so I was like -- 12 Q Did you think that that was -- 13 A Discrimination? Yeah. 14 Q And why do you think that you were -- what basis -- 15 A Because why does -- 16 (Reporter interrupts.) 17 Q You have to wait for each other. 18 A Oh, okay. I'm sorry. 19 Q Yeah, she can only take one of us at one time. 20 Why did you -- what basis did you think you were 21 being discriminated on? 22 A Just because why did I get three days and the other -- 23 to me, the white guy, he didn't get three days, but he 24 can cuss these ladies out and say whatever and then 25 admit that you did say this and they say they just</p>

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<p style="text-align: right;">Page 9</p> <p>1 wrote you up, that's not fair.</p> <p>2 Q You've been described as being very emotional and upset</p> <p>3 about Sala's and -- well, Sala's discrimination</p> <p>4 complaint.</p> <p>5 A Just because when -- when she came over it seemed like</p> <p>6 they was being bullied -- bullying to her, you know</p> <p>7 what I mean, just doing whatever they want or saying</p> <p>8 whatever they want, and I'm here like, no, you can't --</p> <p>9 you know, you can't harass -- you can't harass the</p> <p>10 woman, you know, you can't harass her or whatever. And</p> <p>11 they just keep on doing it. So I said, nah, y'all</p> <p>12 can't do that.</p> <p>13 Q There's been a suggestion that you are emotional about</p> <p>14 this race discrimination and retaliation complaint</p> <p>15 because you have a personal or romantic relationship</p> <p>16 with Sala.</p> <p>17 A No. No. She's just a union member just like I am, and</p> <p>18 I talked to them -- I treat everybody the same. I</p> <p>19 don't care who they are. If somebody got a problem,</p> <p>20 I'm going to go over there and help them, each and</p> <p>21 every one of them and ask them, hey, what you doing,</p> <p>22 you know, it's not right, it's not right.</p> <p>23 Q Have you ever told Scott Reed that you were having a</p> <p>24 romantic relationship with Sala?</p> <p>25 A No.</p>	<p style="text-align: right;">Page 11</p> <p>1 get an extra three minutes, four minutes travel time to</p> <p>2 get to the cafeteria.</p> <p>3 So I got in conflict with him. Okay? But then he</p> <p>4 cussed me out and all that. Right? It was just me and</p> <p>5 him and this and that, and then he said a remark that I</p> <p>6 said something, I'm going to F your kids and your wife</p> <p>7 and all this. Then this is when he went to Scott Reed</p> <p>8 and told him that I said it. Then Scott Reed's like --</p> <p>9 to me, he's like -- he's like, guilty, so I'm going to</p> <p>10 give you indefinite suspension. I'm like, for what? I</p> <p>11 have to do my investigation. I said that's cool.</p> <p>12 So I went on home and all that. Then he called me</p> <p>13 back and said, Tom, you not allowed to go into</p> <p>14 department 19. What? You know, he says, no, you can't</p> <p>15 handle union business unless you on -- off work or on</p> <p>16 your break. I said, no, you know.</p> <p>17 My reaction that I got from our union president in</p> <p>18 the union is, a union steward, whenever there's a</p> <p>19 problem, that whoever that person want, that they can</p> <p>20 go solve that. Why we got to wait until after work or</p> <p>21 on my break? Because when they want to discipline me,</p> <p>22 they do it on the company's time.</p> <p>23 Q Did you grieve the discipline that you received in</p> <p>24 relation to --</p> <p>25 A I signed because, to me, it seem like I had to sign</p>
<p style="text-align: right;">Page 10</p> <p>1 Q Have you ever told anybody at work that you were --</p> <p>2 A No.</p> <p>3 Q -- having a romantic --</p> <p>4 A No.</p> <p>5 Q -- relationship with Sala?</p> <p>6 A No.</p> <p>7 Q Has any manager ever asked you about it?</p> <p>8 A No.</p> <p>9 Q Have you ever been asked about your -- the nature of</p> <p>10 your relationship with Sala by anybody in the union?</p> <p>11 A No.</p> <p>12 Q Did you tell people that if this case is resolved, you</p> <p>13 and Sala are going to take the money and go to Florida?</p> <p>14 A No, because I can't swim and I don't like water.</p> <p>15 Q Have you been prohibited from going into department 19?</p> <p>16 A Yes.</p> <p>17 Q Why?</p> <p>18 A Why is because of the supervisor that's over there.</p> <p>19 Okay? He used to be in the smoke alley. His name is</p> <p>20 Ernest Terry, and he used to be the smoke alley</p> <p>21 supervisor. And he came over there trying to be macho</p> <p>22 man, or whatever, and come over there to the honey line</p> <p>23 trying to tell them 15-minute break and this and that,</p> <p>24 or I'll stop this line and -- I'll stop the line and</p> <p>25 you go to break when I go to break. No. They used to</p>	<p style="text-align: right;">Page 12</p> <p>1 this thing to go back to work. I was like, hmm, you</p> <p>2 know, so I did sign it, and he said I couldn't go to</p> <p>3 department 19, have any kind of communication with</p> <p>4 department 19.</p> <p>5 Q Do you know of anybody else who has received the sort</p> <p>6 of disciplinary action that you've received for</p> <p>7 participation in a race discrimination or retaliation</p> <p>8 complaint?</p> <p>9 MS. CALEM: Object to the form.</p> <p>10 THE WITNESS: No.</p> <p>11 BY MS. POCHOP:</p> <p>12 Q Did you think that the disciplinary action that was</p> <p>13 taken against you for your participation in the -- in</p> <p>14 Sala's discrimination and retaliation complaints was</p> <p>15 related to her objection to discrimination and --</p> <p>16 A Yes.</p> <p>17 MS. CALEM: Object to the form.</p> <p>18 BY MS. POCHOP:</p> <p>19 Q Did you report that to Smithfield management?</p> <p>20 A No.</p> <p>21 Q Why not?</p> <p>22 A It's because who was I supposed to report it to?</p> <p>23 Scott?</p> <p>24 BY MS. POCHOP:</p> <p>25 Q Yeah. Why not?</p>

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<p style="text-align: right;">Page 13</p> <p>1 A At that time, like, you know -- at that time, okay, I 2 told the president of the union, I said, man, it's not 3 right, you know, they was doing this and they give me 4 the time because I take [sic] up for the lady and her 5 right. I said, no, that's -- that's -- that's not 6 right, because -- I said, man, that's -- you can't do 7 that. And so -- so they're going after me for whenever 8 I do something, boom, three days, because I take up for 9 the union people saying this and that and they don't 10 want me to do that. 11 Q What does your own disciplinary history look like at 12 the company? 13 A Oh, it's all right. I got three days for calling him 14 out his name. I got that indefinite -- 15 (Interruption by reporter.) 16 THE WITNESS: No, because I told him to do his 17 damn job. Scott. I told the steward, I go up to his 18 ear -- 19 BY MS. POCHOP: 20 Q Are you saying calling out -- 21 A No, I called him -- I called him in his ear, I cussed 22 him out, told him to do his damn job and take care of 23 the people, the union people. 24 Q Your voice is so quiet that we're having a hard time 25 hearing.</p>	<p style="text-align: right;">Page 15</p> <p>1 MS. POCHOP: I don't have any further questions, 2 Tom. 3 MS. CALEM: I have a few questions. 4 EXAMINATION 5 BY MS. CALEM: 6 Q So when this thing happened with Scott Genzler -- 7 A Uh-huh. 8 Q -- you went to see Scott Reed about it, right? 9 A Yeah. 10 Q And he listened to you, right? 11 A Yep, I went -- yeah, okay. I went and talked to Scott 12 Reed first, like -- but first I talked to him on the 13 telephone. Okay? First I talked to him on the 14 telephone, and he said, we're going to make this right. 15 That's what Scott Reed told me. Okay? I said okay. 16 He said, let me -- let me do my investigation and let 17 me check in, and all this, and check in -- check in on 18 it. Right? 19 All right. Then he came back and he called me 20 down to the personnel office and said -- and then Scott 21 told Scott Reed he did say this. Right? And then 22 Scott Reed told -- said to me that, I can't punish him 23 twice because Carrie already punish him. I was like, 24 but you give these girls a write-up? And he said 25 Sala -- he told me Sala got wrote up and Scott got</p>
<p style="text-align: right;">Page 14</p> <p>1 A Okay. No. Okay. When I went over there and told that 2 union steward to do your damn job and all that, since 3 then, it seem like whenever something went wrong or 4 done something and I go up, and if they got a complaint 5 and their steward ain't over there -- he's been sick 6 and all that -- they come over there and ask me, hey, 7 Tom, and I will call a business agent, maybe BJ Manning 8 [sic] and them to come take care of this. But then I 9 got the problem, if I do anything, they got me straight 10 over to that HR. 11 Q For disciplinary action? 12 A Yep. 13 Q Is that different -- 14 A Yep. 15 Q -- than how you were treated before -- 16 A Yep. 17 Q -- you were involved with -- 18 A Yep. 19 Q -- Sala and Yvette's discrimination complaint? 20 A Yep. It was okay. Okay? I had 17 years perfect 21 attendance, and I lost all that because I took up for 22 them for discrimination, telling them they can't do 23 this to them, they can't discriminate y'all because of 24 that, and he can't say what he said and don't nothing 25 happen. He can't do that.</p>	<p style="text-align: right;">Page 16</p> <p>1 wrote up. I said, they shouldn't even got wrote up for 2 this. 3 Q So let me ask you this: Did you know that their 4 write-ups -- Sala, Yvette, and Lorena -- were 5 withdrawn? 6 A No. After -- after I came -- 7 Q Right. 8 A -- yeah. 9 Q Right. You knew they were withdrawn afterwards, right? 10 A After that, yes. 11 Q So do you think in that way Scott Reed was trying to 12 make it right? 13 A Make it right? 14 Q By withdrawing their write-ups? 15 A No. Because why did he -- did he take Scott's too? 16 Q He didn't withdraw Scott's. 17 A Okay. I don't -- but I don't -- but I don't know if he 18 got wrote up or not. But why do you get a written for 19 somebody saying something like that, with their policy, 20 zero policy? Why did I get three days three days later 21 for cussing somebody out? 22 Q Okay. All right. 23 A I didn't understand. I'm just saying I didn't 24 understand the whole thing. 25 Q I understand what you're saying there.</p>

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<p style="text-align: right;">Page 21</p> <p>1 though --</p> <p>2 Q I don't know.</p> <p>3 A -- to Lisa, when there's -- to me, there's -- no, I'm</p> <p>4 not -- no, I never did nothing like that. No. Lisa?</p> <p>5 Nah. No. Nah.</p> <p>6 MS. CALEM: Let's take two minutes to go over</p> <p>7 notes, please.</p> <p>8 We don't have anything else.</p> <p>9 FURTHER EXAMINATION</p> <p>10 BY MS. POCHOP:</p> <p>11 Q Were you ever interviewed by anybody at HR about Lisa</p> <p>12 Christion's allegation that you sexually harassed her</p> <p>13 some years ago?</p> <p>14 A No.</p> <p>15 Q Is that kind of news to you today?</p> <p>16 A Yeah, that's news. Like, what? Oh, no. Wow, Lisa?</p> <p>17 Whoa, no. No. That was my first, like, whoa, no.</p> <p>18 Q When did you file an EEO complaint?</p> <p>19 A When I got -- when I got my three days for cussing at</p> <p>20 Tom, where I told him to do his damn job. And I says,</p> <p>21 you gave me three days? He goes yeah. And that's when</p> <p>22 I filed it.</p> <p>23 Q Is the basis of your EEO complaint that you thought it</p> <p>24 was discriminatory or you thought it was retaliation?</p> <p>25 A Retaliation.</p>	<p style="text-align: right;">Page 23</p> <p>1 Q -- EEO complaint?</p> <p>2 A Yes, because -- can I talk now?</p> <p>3 Q Yeah, if you have something that you want to add.</p> <p>4 A I'm just stuck on that zero tolerance. I don't even</p> <p>5 understand what it means. You asked me to, just tell</p> <p>6 me what it means, man, you know, just tell me what it</p> <p>7 means. It mean you tolerate nothing. Okay. So -- but</p> <p>8 they did. And I got three days. Why?</p> <p>9 Q As a union steward, do you have experience in what the</p> <p>10 range of discipline that employees normally get for</p> <p>11 policy violations --</p> <p>12 A No.</p> <p>13 Q -- at Smithfield?</p> <p>14 A No.</p> <p>15 Q Does anybody in the union have that information?</p> <p>16 A No.</p> <p>17 Q So why did you think it was a big deal if you got three</p> <p>18 days for --</p> <p>19 A It's because they got -- he got a write-up for telling</p> <p>20 them to go back to their country and cussing at them</p> <p>21 and calling them whatever this and that, and you give a</p> <p>22 write-up. Where's my write-up? I got three days. Why</p> <p>23 did I get three days?</p> <p>24 Q What did Scott tell you the reason that he couldn't</p> <p>25 give Scott Genzler more discipline was?</p>
<p style="text-align: right;">Page 22</p> <p>1 Q Because of your participation --</p> <p>2 A Right. With them, yeah.</p> <p>3 Q Did you have a lawyer?</p> <p>4 A Nope.</p> <p>5 Q Exhibit 52 and 53 are sitting out, I think, there.</p> <p>6 First of all, is that Exhibit 53 that you're looking</p> <p>7 at?</p> <p>8 A Yes.</p> <p>9 Q Can you tell me, is that a document that you prepared?</p> <p>10 A Yeah, yeah, I wrote this. I wrote this out because,</p> <p>11 after that happened to Sala and them and I got my three</p> <p>12 days, I told the president of the union, and he said,</p> <p>13 Tom, you need to document whatever's going on so you</p> <p>14 can remember what's going on. So I said okay.</p> <p>15 So I wrote this up for Sala or whatever, and let</p> <p>16 them know, because she was on open work in</p> <p>17 department 19 and that she couldn't ever use her</p> <p>18 seniority or none of that.</p> <p>19 Q Were you involved, as the union steward, in any of the</p> <p>20 issues that Sala raised about having to work with Juan</p> <p>21 after she made this complaint about Scott Genzler?</p> <p>22 A No, I wasn't in on them.</p> <p>23 Q Is Exhibit 52, sitting next to you, is that the</p> <p>24 three-day suspension that triggered your own --</p> <p>25 A Yeah.</p>	<p style="text-align: right;">Page 24</p> <p>1 A He said that he already was disciplined one time by</p> <p>2 Carrie and he can't override Carrie.</p> <p>3 Q Is that accurate under the union contract?</p> <p>4 A No --</p> <p>5 MS. CALEM: Objection to the form.</p> <p>6 BY MS. POCHOP:</p> <p>7 Q You can answer.</p> <p>8 A No, I don't think -- yeah, because he's in human</p> <p>9 resource. Because anything else goes on, Scott, he</p> <p>10 disciplines or he over -- he over -- he overrides that.</p> <p>11 Because the incident that happened here with them is</p> <p>12 that Sala had an incident down there and she got three</p> <p>13 days because some girl over there threatened to kill</p> <p>14 her and -- threatened to kill her and do this and was</p> <p>15 calling her old or something like that, and then Sala</p> <p>16 called her ugly. Right? And then she got three days.</p> <p>17 And she wanted to report it to HR. Like, how you going</p> <p>18 to get three days and you report it to somebody? But</p> <p>19 the other girl got three days too. Don't get me wrong,</p> <p>20 though. But you threaten to kill somebody, you still</p> <p>21 got a job, but you got three days because y'all two are</p> <p>22 arguing, so they both have three days.</p> <p>23 MS. POCHOP: I don't have any more questions, Tom.</p> <p>24 THE WITNESS: Okay.</p> <p>25 MS. CALEM: Neither do I.</p>